

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

FA. No. 1 of 2019

Date of Decision: 28.10.2021

Smti. Clarinda Momin Vs. Smti. Brishmony G. Momin

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A.H. Hazarika, Adv.
For the Respondent(s) : Mr. A. Choudhary, Adv. vice
Mr. H.R. Nath, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. Heard Mr. A. H. Hazarika, learned counsel for the Appellant who has submitted that the Appellant herein is the executor of the last Will and Testament of her elder brother (Late) Pleander G. Momin, who during his lifetime had executed his last Will and Testament on 31.08.2004, bequeathing all his landed property including four residential standing houses and other belongings, moveable and immoveable to the Appellant herein to the exclusion of the Respondent herein who was his first wife. The said elder brother of the Appellant expired on 23.09.2004.

2. Mr. Hazarika has further submitted that the Appellant had made an application before the Garo Hills District Council Court at Tura for administration of the last Will and Testament as stated above and the learned Court vide order dated 10.05.2007 had granted probate of the Will in favour of the Appellant.

3. The Respondent being aggrieved by the said order dated 10.05.2007 had approached the Hon'ble Gauhati High Court, Shillong Bench, (as this Court then was) with a revision application registered as CR(P) No. 18 (SH) of 2008 and the Hon'ble High Court after hearing the parties vide judgment and order dated 09.07.2009 had allowed the said revision application and has set aside the probate of the Will dated 10.05.2007 and has further directed that the case be transferred to the learned Judge, District Council Court, Shillong.

4. Thereafter, the Appellant had filed an application before the Court of the learned Additional Judge, District Council Court, Shillong for probate of the said Will dated 31.08.2004 which was registered as Misc. Case No. 2 of 2009. However, in course of proceedings the Appellant had made a prayer for withdrawal of the case with liberty to file a fresh one which application was not objected to by the Respondent herein and accordingly, a fresh case before the Court of the Additional District Magistrate (Judicial), Williamnagar was filed. On being pending before the said court for a long time, the Learned Additional District Magistrate (Judicial) has concluded that the court is a wrong forum for the parties to pursue the matter both being tribal belonging to the Garo community and as such, only the Garo Hills District Council Court has got jurisdiction to try the matter.

5. The Appellant accordingly filed an application for probate before the Civil Judge, Garo Hills Autonomous District Council Court, Tura and the same was registered as Probate Case No. 1 of 2009. However, the Appellant has failed to array the Respondent herein as a necessary opposite party in the said Probate Case No. 1 of 2009 which prompted the Court of the Judge District Council Court, Garo Hills Autonomous District Council (hereinafter referred to as GHADC), Tura to pass the impugned order dated 19.06.2019 rejecting the application of the Appellant herein. Hence, this appeal.

6. Mr. Hazarika has again submitted that the learned Judge, District Council Court, GHADC has dismissed the application only on the ground that the Respondent herein was not made a party to the said application and also

on the ground that there was a delay of 9/10 years in filing the application without any sufficient explanation for condonation of delay and on this premise, the learned Court has rejected the application for want of legal jurisdiction.

7. Finally, Mr. Hazarika has submitted that this matter may be remanded to the Court of the Judge, District Council Court, GHADC for continuation of the trial with liberty to the Appellant to implead the Respondent as a party thereto and thereafter to dispose of the same in accordance with law.

8. Mr. A. Choudhary, learned counsel for the Respondent has not made any counter submission to the submissions made by Mr. Hazarika and has instead consented to the prayer that this matter may be remanded to the Court of the Judge, District Council Court, GHADC for trial after allowing the Respondent herein to be made a party thereto.

9. Upon hearing the learned counsels for the parties, the facts and circumstances of the case as stated above need not be reiterated. A perusal of the impugned order is however necessary to come to a finding as to whether the Appellant has been able to make out a case on her behalf.

10. What is noticed in the impugned order is that the learned Judge District Council Court, GHADC has dismissed the application for probate of the said Will dated 31.08.2004 mainly on the ground that the court lacks legal jurisdiction.

11. In understanding the powers and jurisdiction of the District Council Courts to try suits and cases between parties who belonged to the Scheduled Tribe community within the State of Meghalaya, paragraph 4 of scheduled 6 of the Constitution of India is very clear when it speaks of constitution of courts for the trial of suits and cases between the parties all of whom belonged to the Scheduled Tribe Community within such areas. This, in effect would show that the District Council Courts are conferred with powers and jurisdiction to try suits and cases between members of the Scheduled Tribes

community residing within the territorial jurisdiction of such courts.

12. It may be mentioned that an application for probate of a Will has been made in accordance with the provisions of the Indian Succession Act, 1925 which is a special Act. Section 264 of the said Act speaks of the jurisdiction of District Judge in granting and revoking probate and section 268 prescribed for proceedings in such case to be regulated by the code of civil procedure. It is understood that in areas where the District Council Courts exercises jurisdiction, particularly in cases between two tribals, the Judge District Council Court exercises powers similar to that of a District Judge and as such, in this instant case it cannot be said that the learned Judge, District Council Court, GHADC lacks the competent jurisdiction. The impugned order on this count therefore is not sustainable.

13. It is also observed that notwithstanding the fact that the Appellant herein has admitted and was duly observed in the impugned order that the Respondent could have been issued with notice which was not done so by the Petitioner/Appellant, however, the import of the impugned order is that the learned Judge, District Council Court, GHADC has dismissed the application mainly on the ground of limitation, holding that the Appellant/Petitioner has not given sufficient explanation for condonation of delay and has slept over her rights for 9/10 years.

14. Again, the Appellant has made an averment in the appeal indicating to the extent that after seeking leave from the Court of the learned Additional Judge, District Council Court, Shillong to withdraw and file a fresh petition, the Appellant had preferred the petition before the Court of the Additional District Magistrate(Judicial) Willamnagar and the matter was pending in that court for about 9/10 years after which the learned Additional District Magistrate(Judicial) had declined to entertain the petition for lack of jurisdiction and only then did the Appellant filed the petition before the said District Council Court, GHADC.

15. Given the facts as stated above and having held that the said Court of

the Judge, District Council Court, GHADC has the jurisdiction to try the matter, the issue of limitation ought to have been taken up taking into account the provision of Sub-Section 2 of Section 14 of the Limitation Act, 1963 which squarely covered the case of the Appellant/Petitioner. The provision reads as follows:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.-.....(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it.....”

16. In view of the above, this appeal is allowed. The impugned order is hereby set aside and quashed. Probate Case No. 1 of 2019 in the Court of the Judge, District Council Court, GHADC is restored to file. The Appellant/Petitioner as well as the Respondent herein are accordingly directed to appear before the said Court on 20.11.2021 to proceed in the case.

17. Registry is directed to return the Lower Court case record immediately.

18. Matter disposed of. No cost.

Judge

Meghalaya
28.10.2021
“D. Nary, PS”